
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

STEPHEN MABEY and TATYANA
MABEY,

Plaintiffs,

v.

SUPERINTENDENT SAM RAY and
NORTH SANPETE SCHOOL DISTRICT,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

- **ADOPTING [24] REPORT AND
RECOMMENDATION; and**
- **GRANTING [25] MOTION FOR
EXTENSION OF TIME**

Case No. 4:18-cv-00061-DN-DBP

District Judge David Nuffer

Magistrate Judge Dustin B. Pead

The Report and Recommendation¹ issued by United States Magistrate Judge Dustin Pead on February 4, 2019 recommends that Plaintiffs' Motion to Sever and Remand² be denied and that Defendants' Motion to Dismiss³ be granted in part and denied in part.

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of its service pursuant to [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#). No party filed a written objection to the Report and Recommendation as provided by court rules. Therefore, the analysis and conclusion of the Magistrate Judge are accepted and the Report and Recommendation⁴ is adopted in its entirety.

¹ Report and Recommendation on Defendants' Motion to Dismiss ("Report and Recommendation"), [docket no. 24](#), entered Feb. 4, 2019.

² Motion to Sever State Law Claims and Remand Plaintiffs Severed Claims of Judicial Review and Appeal of School Boards Final Decision Back to Utah District Court, or Injunctive Relief ("Motion to Sever and Remand"), [docket no. 10](#), filed Oct. 17, 2018.

³ Motion to Dismiss and Memorandum in Support ("Motion to Dismiss"), [docket no. 9](#), filed Oct. 12, 2018.

⁴ Report and Recommendation, [docket no. 24](#).

As part of the Report and Recommendation, the Magistrate Judge found that Plaintiffs' Complaint, as currently drafted, fails to adequately state an equal protection claim against Defendants. However, Plaintiffs were granted leave to amend their Complaint to state a valid equal protection claim against North Sanpete School District.

Plaintiffs subsequently filed a motion for continuance or extension of time ("Motion for Extension of Time"), requesting additional time to attempt alternative dispute resolution.⁵ In response, Defendants state that they do not oppose a two-week extension for Plaintiffs to file an amended complaint, but otherwise oppose any general stay imposed on the case.⁷ Plaintiffs have failed to demonstrate that a stay is warranted.⁸ However, in light of Defendant's non-opposition, a reasonable extension of time to file an amended complaint will be granted.

ORDER

IT IS HEREBY ORDERED that the Report and Recommendation⁹ is ADOPTED. Plaintiffs' Motion to Sever and Remand¹⁰ is DENIED. Defendants' Motion to Dismiss¹¹ is GRANTED in part and DENIED in part. With the exception of Plaintiffs' equal protection claim, all of Plaintiffs' claims are DISMISSED with prejudice.

⁵ Motion for Continuance or Extention [sic] of Time for Good Faith Alternative Dispute Resolution Attempt ("Motion for Extension of Time"), [docket no. 25](#), filed Feb. 21, 2019.

⁷ [Docket no. 26](#), filed Feb. 25, 2019.

⁸ *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963) (It is well settled that the district court has the power to stay proceedings pending before it and to control its docket for the purpose of 'economy of time and effort for itself, for counsel, and for litigants.') (internal citations omitted).

⁹ [Docket no. 24](#).

¹⁰ [Docket no. 10](#).

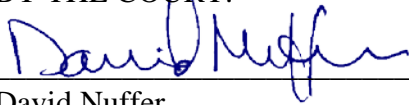
¹¹ [Docket no. 9](#).

IT IS FURTHER ORDERED that Plaintiffs' Motion for Extension of Time¹² is GRANTED. If Plaintiffs intend to proceed with their equal protection claim, Plaintiffs must file an amended complaint on or before March 15, 2019.

In the event that an amended complaint is not filed by March 15, 2019, Plaintiffs' case in its entirety shall be DISMISSED with prejudice and the Clerk shall close the case.

Dated February 27, 2019.

BY THE COURT:



David Nuffer
United States District Judge

¹² [Docket no. 25](#).